

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION**

BEEF PRODUCTS, INC., BPI
TECHNOLOGY, INC. and FREEZING
MACHINES, INC.,

Plaintiffs,

vs.

AMERICAN BROADCASTING
COMPANIES, INC., ABC NEWS, INC.,
DIANE SAWYER, JIM AVILA,
DAVID KERLEY, GERALD
ZIRNSTEIN, CARL CUSTER, and KIT
FOSHEE,

Defendants.

CIV. 12 -4183

AFFIDAVIT OF CARL CUSTER

1. I am a resident of Bethesda, Maryland and a former employee of the United States Department of Agriculture, Food Safety Inspection Service ("USDA FSIS"). I participated in one on-camera interview with Jim Avila of ABC News in Washington, D.C. The interview was arranged by ABC News contacting me and requesting the interview. I did not contact ABC News nor ask to be interviewed.

2. I have never contacted any news media in South Dakota for any purpose, including to make statements regarding either finely textured beef or BPI. Likewise, I have not contacted any of BPI's customers and urged them to stop purchasing product from BPI.

3. Before this lawsuit was filed, the only time I had been to South Dakota was as a tourist and the only time I had ever communicated with anyone in South Dakota by telephone was to reserve a hotel room.

4. My statements were not directed towards any South Dakota person or entity but a product called lean, finely textured beef by BPI.

Dated at Sioux Falls, South Dakota, this 24 day of October, 2012.

Carl Custer

Carl Custer

Subscribed and sworn to before me this 24 day of October, 2012.



Sarah L. Scherr

Notary Public – South Dakota

My commission expires: 2/25/14

CERTIFICATE OF SERVICE

The undersigned, one of the attorneys for Defendants Gerald Zirnstein and Carl Custer, hereby certifies that a true and correct copy of the foregoing "*Affidavit of Carl Custer*" was served upon the following by filing the same with the Clerk of Courts through CM/ECF:

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on this 30th day of October, 2012.

/s/ Vince M. Roche
Vince M. Roche